

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

PREVENT U.S.A. CORPORATION,

*Plaintiff,*

v.

VOLKSWAGEN, AG and  
VOLKSWAGEN GROUP OF AMERICA,  
INCORPORATED,

*Defendants.*

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CIVIL ACTION NO. 2:22-CV-00506-JRG-RSP

**ORDER**

Volkswagen, AG and Volkswagen Group of America, Incorporated (“Volkswagen”) previously filed a Motion to Dismiss (Dkt. No. 20). Magistrate Judge Payne entered a Report and Recommendation (Dkt. No. 43), recommending denial of Volkswagen’s Motion to Dismiss. Volkswagen has now filed Objections (Dkt. No. 49), with Plaintiff Prevent U.S.A. Corporation filing a Response (Dkt. No. 57.)


After conducting a *de novo* review of the briefing on the Motion to Dismiss, the Report and Recommendation, and the briefing on Volkswagen’s Objections, the Court agrees with the reasoning provided within the Report and Recommendation and concludes that the Objections fail to show that the Report and Recommendation was erroneous. Consequently, the Court **OVERRULES** Volkswagen’s Objections and **ADOPTS** the Report and Recommendation and **ORDERS** that the Motion to Dismiss (Dkt. No. 20) is **DENIED**.

The Court further declines to certify the *Mitsui* issue for interlocutory review under 28 U.S.C. § 1292(b). *Earl v. Boeing Co.*, No. 4:19-CV-507, 2021 U.S. Dist. LEXIS 50844, 2021WL 1080689, at \*2 (E.D. Tex. Mar. 18, 2021) (“The decision to certify an interlocutory appeal lies

within the sound discretion of the district court.”) (citing *Richardson v. Univ. of Tex. Sys.*, No. 5:19-CV-271-XR, 2019 U.S. Dist. LEXIS 189804, 2019 WL 5683470, at \*1 (W.D. Tex. Oct. 31, 2019)). In enacting § 1292(b), “Congress thus chose to confer on district courts first line discretion to allow interlocutory appeals.” *Swint v. Chambers Cnty. Comm'n*, 514 U.S. 35, 47, 115 S. Ct. 1203, 131 L. Ed. 2d 60 (1995). Even when the statutory criteria are met, district courts may nevertheless deny certification. *SEC v. Sethi Petroleum, LLC*, No. 4:15-CV-338, 2016 U.S. Dist. LEXIS 110195, 2016 WL 4400064, at \*2 (E.D. Tex. Aug. 18, 2016).

**So Ordered this**

**Aug 3, 2023**

  
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RODNEY GILSTRAP  
UNITED STATES DISTRICT JUDGE